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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLAYTON BRIAN ATKINS
and JAY STEPHEN GONDEK

Appeal 2008-1121
Application 09/800,638
Technology Center 2600

Decided: July 17, 2008

Before KENNETH W. HAIRSTON, ANITA PELLMAN GROSS, and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-17 and 19. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Appellants' claimed invention relates to improvements in digital image appearance and compressibility of the digital image. (Spec. 2:5-7). The system disclosed selects a filter based on an input pixel window and indications of an edge parameter and an activity metric therein. (Spec. 4:6-14).

Independent claim 1 is illustrative of the invention and reads as follows:

> 1. An image processing system comprising:
>
> a filter selection mechanism for receiving an input pixel window and responsive thereto for generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window, wherein a combination of both the edge parameter and the activity metric is not required for the generating of the filter identifier; and
>
> a filter application unit coupled to the filter selection mechanism for receiving the filter identifier and applying a filter identified by the filter identifier to the input pixel window to generate an output pixel.

The Examiner relies on the following prior art reference to show unpatentability:

Balasubramanian	US 6,646,762 B1	Nov. 11, 2003 (filed Nov. 5, 1999)

Claims 1-17 and 19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Balasubramanian.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only

those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C. § 102(e), with respect to appealed claims 1-17 and 19, does Balasubramanian disclose all of the elements of those claims to render them anticipated?

FINDINGS OF FACT

1. The Specification details that the image processing system has a filter selection mechanism for receiving a filter selection window corresponding to a current input pixel and responsive thereto for generating a filter identifier based on either one or more edge parameters computed based on the filter selection window or an activity metric computed based on the filter selection window. The identified filter is used to generate an output pixel. The filter selection window may be the same as the input pixel window. (Spec. 4:6-14).

2. Independent claim 1 recites, in part, "generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window." Independent claim 8 recites a similar limitation, but does not recite that the parameters are computed based on the input pixel window. Independent claim 15 recites subject matter similar to

claim 1 with the activity metric being a level of variation, although all of the windows are recited to be the same window.

3. Balasubramanian discloses mapping processes that map colors outside a printer gamut to colors within, deriving a comparison metric that may be subjected to adaptive filtering. The filter being applied is selected based on local image data variation, taking into account edges and noise. Different filter footprints may be chosen based on local image characteristics and the amount of activity within a predefined neighborhood of a pixel. (Abstract; Col. 7, ll. 19-49).

4. Balasubramanian discloses that the filter can be adapted to improve its use by changing the filter footprint as a function of the local image data or the filter values or coefficients, rather than the footprint, can be changed. (Col. 7, ll. 11-18).

PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998).

ANALYSIS

Appellants argue Balasubramanian and the claimed embodiments are very different in that Balasubramanian teaches that different size areas are used for different activity levels. (App. Br. 9). In other words, Appellants argue that Balasubramanian calculates the large and small activity metrics based on different input windows, while the instant claims require the same input window. (App. Br. 9-10). We note, in passing, that while Appellants have raised this argument with respect to independent claims 1, 8, and 15, only claims 1 and 15 actually recite this requirement. (FF. 2). The Examiner finds that Balasubramanian teaches both the processes of using different size windows and using a commonly-sized window. (Ans. 13-14). We agree.

Balasubramanian certainly emphasizes the process of using differently sized windows and discloses their use favorably. (FF. 3). However, Balasubramanian also discloses processes that parameters can be changed in place of changing the window size, so that a constant sized footprint can be utilized. (FF. 4). The fact that the embodiments that provide for a non-varying footprint are not emphasized nor held to be the best mode for carrying out the invention does not negate that fact that they are actually disclosed.

Additionally, Appellants also argue that Balasubramanian teaches away from the claimed configuration because Balasubramanian teaches calculating different activity metrics based on different input windows. (App. Br. 10, Reply Br. 4-5). However, given that the rejection of the claims is made under 35 U.S.C. § 102, the question of "teaching away" is immaterial. As discussed above, negative implications taught by a reference

do not abrogate its actual disclosure. Appellants also argue that the Examiner has made use of inconsistent definitions of "footprint" such that no prima facie rejection can be established. (App. Br. 11). However, we find the Examiner's use of "footprint" in the rejection and Balasubramanian's use of the term in its disclosure to be consistent.

In addition, Appellants also assert that the rejection of the claims impermissibly relies on multiple embodiments of a reference in supporting an anticipation rejection. (Reply Br. 2-3). However, we do not find that the Examiner has combined different embodiments; rather, we find that the Examiner has applied the disclosed, alternate embodiment to the example provided in the reference. Balasubramanian discloses, at column 7, lines 28-36, looking at very low activity, medium activity, and high activity regions using different window sizes. In the rejection, the Examiner applies the process when the same window is used, as disclosed in the same reference. (FF. 4). The Examiner's application of the alternate embodiment to the example illustrates the disclosure of the subject elements of the independent claims by Balasubramanian. We find no error in the Examiner's interpretation.

In view of the above discussion, Appellants have not shown that the Examiner's anticipation rejection was made in error, and we affirm the Examiner's 35 U.S.C. § 102(e) rejection, based on Balasubramanian, of independent claims 1, 8, and 15, as well as dependent claims 2-7, 9-14, 16, 17, and 19, not separately argued by Appellants.

CONCLUSION

The decision of the Examiner rejecting claims 1-17 and 19 under 35 U.S.C. § 102(e) based on Balasubramanian is affirmed.

DECISION

The Examiner's rejection of claims 1-17 and 19 before us on appeal is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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